

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ERIC HORTON,

Plaintiff,

V.

AMERICOOL HEATING & A/C LLC, et al..

Defendants.

CASE NO. 2:22-cv-01838-BJR

**ORDER GRANTING
PLAINTIFF'S MOTION TO
REMAND**

This matter comes before the Court on Plaintiff Eric Horton's Motion to Remand, Dkt. No.

15. For the reasons stated below, the Court grants Horton's motion and remands the case to King County Superior Court.¹

I. BACKGROUND

A. Horton's State Court Lawsuit and Defendants' Removal to Federal Court

From May to October 2022, Horton worked as a Heating, Ventilation, & Air Conditioning (“HVAC”) technician for Defendant Americool Heating & A/C LLC (“Americool”). Dkt. No. 1-

¹ In light of this ruling, the Court does not reach Defendants' Motion for Partial Judgment on the Pleadings, Dkt. No. 16.

1 4 at 3. Americool is a Washington limited liability company that employs technicians out of
2 locations in Centralia and Kennewick to install, maintain, and repair HVAC systems. *Id.*; see Dkt.
3 No. 2 at 2. Defendants Lincoln Anderson and Norman Upson are co-owners of Americool and its
4 president and vice president, respectively. Dkt. No. 1-4 at 3–4; Dkt. No. 2 at 1.

5 On November 17, 2022, Horton commenced this putative class action in King County
6 Superior Court, alleging that by failing to provide rest breaks, meal breaks, and proper
7 compensation required by Washington law, Defendants engaged in “a systemic scheme of wage
8 and hour abuses against their installation and service technicians.” Dkt. No. 1-4 at 2. Horton filed
9 suit on behalf of himself and a proposed class of all individuals “who are or have been employed
10 as installation or service technicians by Americool . . . in the state of Washington from November
11 17, 2019, through the date of final disposition of this action.” *Id.* at 4. He avers that Americool
12 failed to provide (1) paid ten-minute rest breaks for every four hours worked or ten minutes of
13 additional pay for each missed rest break, *id.* at 7; (2) meal breaks after five consecutive hours
14 worked and a second meal break during ten-hour days, or payment for each missed meal break, *id.*
15 at 7–8; (3) compensation for off-the-clock work time, including preparatory work and meal breaks
16 that were recorded but not received, *id.* at 8; and (4) overtime wages for travel time or missed
17 breaks that when calculated, extended the work week beyond forty hours, *id.* at 9. In addition,
18 Horton alleges that Americool improperly deducted wages for tools and supplies purchased by
19 employees. *Id.* at 9–10.

20 Horton asserts six violations of Washington law. First, for failing to provide employees
21 with rest breaks in violation of the Industrial Welfare Act, RCW § 49.12.020, and WAC 296-126-
22 092 (“Count I”). *Id.* at 10. Second, for failing to provide meal periods in violation of the same
23 statute and administrative code provision (“Count II”). *Id.* at 11. Third, for failing to pay wages in
24 the amount required under the Minimum Wage Act, RCW 49.46.090 (“Count III”). *Id.* at 12.

1 Fourth, for failing to pay overtime wages in violation of RCW 49.46.130 (“Count IV”). *Id.* at 13.
 2 Fifth, for unlawful wage deductions in violation of the Wage Rebate Act, RCW 49.52.060, and
 3 WAC 296-126-028 (“Count V”). *Id.* at 14. And sixth, for the willful refusal to pay earned wages
 4 in violation of RCW 49.52.050 (“Count VI”). *Id.* at 14; *see also* Dkt. No. 15 at 8.

5 On December 29, 2022, Defendants timely removed the case to federal court. Dkt. No. 1
 6 at 2. Defendants contend that this Court has subject matter jurisdiction over Horton’s claims
 7 pursuant to 28 U.S.C. § 1331 because, although Horton alleges violations exclusively under state
 8 law, his claims arise under federal law. *Id.* at 3. Specifically, Defendants maintain that aside from
 9 his rest period claim comprising Count I, each of Horton’s remaining five claims is preempted by
 10 Section 301 of the Labor Management Relations Act (“LMRA”), 29 U.S.C. § 185(a). *Id.* at 3–10.
 11 According to Defendants, those five claims are covered by or require interpretation of a collective
 12 bargaining agreement (“CBA”) that governed the terms and conditions of Horton’s employment
 13 during the relevant period. *Id.* at 4.² Defendants also request that the Court exercise supplemental
 14 jurisdiction over Horton’s rest period claim in Count I pursuant to 28 U.S.C. § 1367(a). *Id.* at 10.

15 **B. Horton’s Motion to Remand**

16 On January 30, 2023, Horton filed a motion to remand the case to King County Superior
 17 Court. Dkt. No. 15. In the motion, he concedes that his claim for meal period violations in Count
 18 II is preempted by Section 301 of the LMRA in light of the CBA provisions governing meal
 19 periods, and states that he agreed to dismiss this claim. *Id.* at 7 & n.1; *see* Dkt. No. 2-1 at 39, 45
 20 (CBA provisions covering meal breaks); WAC 49.12.187 (permitting state statutory rules
 21 regarding “meal periods” for employees in construction trades to be “superseded by a collective

22
 23 ² Americool is a member of the Sheet Metal and Air Conditioning Contractors’ National Association of Western
 Washington, which is part of the Inland Northwest Sheet Metal Contractors Association. Dkt. No. 2 at 2. Inland
 Northwest, in turn, is a party to a CBA with the Northwest Regional Council of SMART Local Union 55 that governed
 24 Horton’s employment with Americool. *Id.*; *see* Dkt. No. 1 at 4, 6–7; Dkt. No. 2-1 at 2–63 (CBA).

1 bargaining agreement”). However, Horton argues that his “remaining claims—for failure to pay
 2 minimum and overtime wages in violation of the Minimum Wage Act, for unlawful deductions in
 3 violation of the Wage Rebate Act deduction regulations, and for willful refusal to pay wages in
 4 violation of the Wage Rebate Act—are . . . not preempted.” Dkt. No. 15 at 7. Horton argues that
 5 such claims “are based on non-negotiable rights conferred by Washington state law, are
 6 independent of any rights given to [him] and class members under the collective bargaining
 7 agreement, and do not require interpretation of the agreement.” *Id.*; *see also id.* at 18. Defendants
 8 oppose the motion. *See generally* Dkt. No. 22.

9 **C. Defendants’ Motion for Partial Judgment on the Pleadings**

10 On January 24, 2023, the parties met and conferred and stipulated to dismissal of Horton’s
 11 meal period claim in Count II, as well as the portions of Counts IV and VI that arose from his meal
 12 period claim. Dkt. No. 16 at 9; *see* Dkt. No. 18 at 2 (“Plaintiff concedes that his second claim for
 13 relief is preempted under Section 301 of the LMRA. Plaintiff also concedes that as a result of this,
 14 he cannot pursue damages under his fourth and sixth claims for relief that are based on the second
 15 claim for relief.”); Dkt. No. 21 at 7–8 (same); *see* Dkt. No. 1-4 at 11–15 (Counts II, IV, and VI
 16 requesting damages for missed meal breaks). The parties were unable to reach an agreement on
 17 whether Horton’s claim in Count III for off-the-clock work performed as a result of being clocked
 18 out for an unused meal break was similarly preempted. Dkt. No. 18 at 2.

19 Thus, on February 16, 2023, Defendants filed a motion for partial judgment on the
 20 pleadings, requesting dismissal of Horton’s request for “damages related to allegedly missed meal
 21 periods” in Count III. Dkt. No. 16 at 6, 14–15; *see* Dkt. No. 1-4 at 12. Defendants further argue
 22 that this claim should be dismissed because Horton did not exhaust the exclusive remedies
 23 provided to him in the CBA regarding meal periods, and that it should be dismissed with prejudice

1 because amendment would be futile. Dkt. No. 16 at 8, 15–17. Horton opposes the motion. *See*
 2 *generally* Dkt. No. 21.

3 II. DISCUSSION

4 A. Legal Standards

5 1. Removal under 28 U.S.C § 1441(a)

6 Except in certain cases, “any civil action brought in a State court of which the district courts
 7 of the United States have original jurisdiction, may be removed by the defendant or the defendants,
 8 to the district court of the United States for the district and division embracing the place where
 9 such action is pending.” 28 U.S.C. § 1441(a). Where diversity jurisdiction under 28 U.S.C. § 1332
 10 is lacking, as is the case here, federal question jurisdiction under 28 U.S.C. § 1331 is required.
 11 “The presence or absence of federal-question jurisdiction is governed by the ‘well-pleaded
 12 complaint rule,’ which provides that federal jurisdiction exists only when a federal question is
 13 presented on the face of the plaintiff’s properly pleaded complaint.” *Caterpillar Inc. v. Williams*,
 14 482 U.S. 386, 392 (1987). This “makes the plaintiff the master of the claim; he or she may avoid
 15 federal jurisdiction by exclusive reliance on state law.” *Id.* In addition, “[u]nder the rule, removal
 16 must be based on the plaintiff’s claims and cannot be based on a defendant’s federal defense.”
 17 *Saldana v. Glenhaven Healthcare LLC*, 27 F.4th 679, 686 (9th Cir. 2022).

18 There is an exception to the well-pleaded complaint rule, though, in instances of complete
 19 preemption, often referred to as the “artful-pleading doctrine.” This exception allows for “removal
 20 where federal law completely preempts a plaintiff’s state-law claim, meaning that the pre-emptive
 21 force of the statute is so extraordinary that it converts an ordinary state common-law complaint
 22 into one stating a federal claim for purposes of the well-pleaded complaint rule.” *City of Oakland*
 23 *v. BP PLC*, 969 F.3d 895, 905 (9th Cir. 2020) (quotations omitted). The Supreme Court has
 24 recognized that Section 301 of the LMRA is one such law, because it “displace[s] entirely any

1 state cause of action ‘for violation of contracts between an employer and a labor organization[.]’”
 2 *Id.* (second alteration in original) (quoting *Franchise Tax Bd. of Cal. v. Constr. Laborers Vacation*
 3 *Tr. for S. Cal.*, 463 U.S. 1, 23, (1983)); *accord Curtis v. Irwin Indus., Inc.*, 913 F.3d 1146, 1152
 4 (9th Cir. 2019).

5 Defendants bear the burden of establishing that removal is proper. *Moore-Thomas v.*
 6 *Alaska Airlines, Inc.*, 553 F.3d 1241, 1244 (9th Cir. 2009). “If at any time before final judgment it
 7 appears that the district court lacks subject matter jurisdiction, the case shall be remanded.” 28
 8 U.S.C. § 1447(c); *see Cal. ex rel. Lockyer v. Dynegy, Inc.*, 375 F.3d 831, 838 (9th Cir. 2004) (“If
 9 the district court at any time determines that it lacks jurisdiction over the removed action, it must
 10 remedy the improvident grant of removal by remanding the action to state court.”). Courts strictly
 11 construe the removal statute against removal jurisdiction, with any doubts as to the right of removal
 12 weighing in favor of remand. *Moore-Thomas*, 553 F.3d at 1244.

13 2. Section 301 Preemption

14 Section 301 of the LMRA provides that “[s]uits for violation of contracts between an
 15 employer and a labor organization . . . may be brought in any district court of the United States
 16 having jurisdiction of the parties, without respect to the amount in controversy or without regard
 17 to the citizenship of the parties.” 29 U.S.C. § 185(a). Although it “contains no express language of
 18 preemption, the Supreme Court has long interpreted the LMRA as authorizing federal courts to
 19 create a uniform body of federal common law to adjudicate disputes that arise out of labor
 20 contracts.” *Curtis*, 913 F.3d at 1151 (citing *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 210
 21 (1985)); *accord Livadas v. Bradshaw*, 512 U.S. 107, 121–22 (1994). Thus, “Section 301 governs
 22 claims founded directly on rights created by collective-bargaining agreements, and also claims
 23 substantially dependent on analysis of a collective-bargaining agreement.” *Caterpillar*, 482 U.S.
 24 at 394 (citations omitted).

1 Consistent with this Supreme Court precedent, the Ninth Circuit has developed a two-step
 2 inquiry for determining whether a claim is preempted. *See Burnside v. Kiewit Pac. Corp.*, 491 F.3d
 3 1053, 1059–60 (9th Cir. 2007). First, “[d]oes the claim seek purely to vindicate a right or duty
 4 created by the CBA itself? If so, then the claim is preempted, and the analysis ends there.”
 5 *Columbia Exp. Terminal, LLC v. Int'l Longshore & Warehouse Union*, 23 F.4th 836, 841 (9th Cir.
 6 2022); *see also Alaska Airlines Inc. v. Schurke*, 898 F.3d 904, 920–21 (9th Cir. 2018) (en banc)
 7 (“If a claim arises entirely from a right or duty of the CBA,” then “the CBA is the only source of
 8 the right the plaintiff seeks to vindicate” and “there is no part of the claim in which the uniform
 9 body of federal labor law does not control the resolution of the parties’ dispute.” (cleaned up)). If
 10 not, courts “proceed to the second step and ask whether a plaintiff’s state law right is substantially
 11 dependent on analysis of the CBA, which turns on whether the claim cannot be resolved by simply
 12 looking to versus interpreting the CBA.” *Columbia Exp. Terminal*, 23 F.4th at 842.
 13 “Interpretation” in this context means something more than consideration, reference to, or
 14 application, and thus state law claims are only preempted at this second step “to the extent there is
 15 an active dispute over the meaning of contract terms” beyond some “hypothetical connection
 16 between the claim and the terms of the CBA” or a need for the court “to refer to the CBA and
 17 apply its plain or undisputed language[.]” *Schurke*, 898 F.3d at 921–22; *accord Kobold v. Good*
 18 *Samaritan Reg’l Med. Ctr.*, 832 F.3d 1024, 1033 (9th Cir. 2016).

19 The Ninth Circuit has also cautioned that “LMRA § 301 preemption [is] grounded in the
 20 need to protect the proper *forum* for resolving certain kinds of disputes (and, by extension, the
 21 substantive law applied thereto).” *Schurke*, 898 F.3d at 922 (emphasis in original); *see Dent v.*
 22 *Nat’l Football League*, 902 F.3d 1109, 1117 (9th Cir. 2018) (same). Therefore, this “inquiry is not
 23 an inquiry into the merits of a claim; it is an inquiry into the claim’s ‘legal character’—whatever
 24 its merits—so as to ensure it is decided in the proper forum.” *Schurke*, 898 F.3d at 924 (quoting

1 *Livadas*, 512 U.S. at 123–24); *see id.* (“Our only job is to decide whether, as pleaded, the claim in
 2 this case is ‘independent’ of the CBA in the sense of ‘independent’ that matters for preemption
 3 purposes: resolution of the state-law claim does not require construing the collective-bargaining
 4 agreement.” (cleaned up)).

5 **B. Whether Horton’s Claims Are Preempted by the LMRA**

6 As discussed above, Defendants acknowledge that Horton’s rest period claim in Count I is
 7 not preempted under the LMRA because the CBA is silent on this issue. Similarly, Horton has
 8 agreed to dismiss his meal period claim in Count II and the corresponding portions of Counts IV
 9 and VI because the CBA supersedes any independent state law right regarding meal breaks. The
 10 Court therefore focuses its analysis on the disputed claims raised in Counts III, IV, V, and VI.

11 1. Horton’s wage and hour claim in Count III does not seek purely to vindicate rights
 12 provided by the CBA³

13 Defendants argue that Count III, for failure to compensate for all hours worked, is
 14 preempted at the first step of *Burnside*, because it is at bottom a claim for relief regarding meal
 15 periods. *Id.* at 8, 12–13.⁴ Defendants attempt to characterize Count III as legally indistinguishable
 16 from Horton’s meal period claim in Count II. The Court is unpersuaded. Unlike Count II, Count
 17 III does not “seek purely to vindicate a right or duty created by the CBA itself[.]” *Columbia Exp.*
 18 *Terminal*, 23 F.4th at 842; *see Kobold*, 832 F.3d at 1033 (“Only if the claim is founded directly on
 19 rights created by a collective-bargaining agreement does § 301 preempt it.” (cleaned up)). To the
 20 contrary, the legal character of Horton’s claim—asserting violations of Section 49.46.090 of
 21 Washington’s Minimum Wage Act for Defendants’ purported failure to pay employees the full

22 ³ Defendants do not dispute that Horton’s wage and hour and unlawful deduction claims in Counts IV, V, and VI do
 23 not meet the first step of the *Burnside* test, as the CBA is not the only source of the rights that Horton seeks to vindicate
 24 in those claims, and therefore must be decided at the second step. Dkt. No. 22 at 13, 16, 18; *see infra*, § II.B.2.

25 ⁴ Defendants’ argument as to Count III in their opposition to remand also forms the basis of their motion for partial
 judgment on the pleadings. *See* Dkt. No. 22 at 13; Dkt. No. 16 at 6–7, 9–10, 12–15.

1 amounts to which they were entitled—is entirely independent of Horton’s rights under the CBA,
 2 even if he could have arguably filed a grievance arising from the same set of facts. *Livadas*, 512
 3 U.S. at 123–24; *see also Schurke*, 898 F.3d at 921 (“[C]laims are not simply CBA disputes by
 4 another name, and so are not preempted under this first step, if they just refer to a CBA-defined
 5 right[.]”). The legal character of Count III is not automatically transformed by virtue of Horton’s
 6 averment that Americool “violated the provisions of RCW 49.46.090 by failing to pay any wage
 7 whatsoever to Plaintiff and Class members for their missed rest and meal breaks.” Dkt. No. 1-4 at
 8 12; *see Schurke*, 898 F.3d at 928 (“The fact that ‘a CBA provides a remedy or duty related to a
 9 situation that is *also* directly regulated by non-negotiable state law does not mean the employee is
 10 limited to a claim based on the CBA.’” (emphasis in original) (quoting *Humble v. Boeing Co.*, 305
 11 F.3d 1004, 1009 (9th Cir. 2002))). Further, Defendants’ citation to Section 49.12.187 of the
 12 Industrial Welfare Act is inapposite, as Horton’s claim here arises under an entirely separate
 13 chapter of the Revised Code of Washington. Section 49.12.187 applies to “rules adopted under
 14 [the Industrial Welfare Act] regarding appropriate rest and meal periods,” not rules under the
 15 Minimum Wage Act concerning proper compensation. RCW 49.12.187.

16 The Court finds that Horton’s wage and hour claim in Count III does not exist solely as a
 17 result of the CBA, and instead, arises from non-negotiable rights conferred under Washington law.
 18 *See, e.g., Stafford v. Key Mech. Co. of Wash.*, No. C21-5063-BHS-MLP, 2021 WL 2211287, at *3
 19 (W.D. Wash. Apr. 27, 2021), *report and recommendation*, 2021 WL 2206496 (W.D. Wash. June
 20 1, 2021). Accordingly, Defendants have failed to demonstrate that Count III is preempted under
 21 the first step of the *Burnside* test.

1 2. Horton's wage and hour and unlawful deduction claims are not substantially
 2 dependent on interpretation of the CBA and are therefore not preempted under
 3 Section 301

4 Turning to the second step of the *Burnside* test, the Court finds that Defendants have not
 5 identified an active dispute over the meaning of the CBA's terms, and have therefore failed to
 6 demonstrate that Horton's claims are preempted under the LMRA. Defendants maintain that
 7 Horton's remaining claims "are either grounded in, or inextricably intertwined with" the CBA, and
 8 that the Court will be required to interpret the CBA's "vague and ambiguous provisions." Dkt. No.
 9 22 at 6. But Defendants offer little support for these assertions. They argue that Horton's claims
 10 are preempted because (1) the CBA "contains detailed provisions regarding wages, overtime
 11 wages, travel time, and hours of work, as well as provisions requiring employees to grieve and
 12 arbitrate all disputes arising out of interpretation and enforcement" of the CBA, *id.* at 14 (citations
 13 omitted); *see also* Dkt. No. 1 at 8; (2) relevant past practices are incorporated into the CBA as
 14 implied terms that must be examined and interpreted, Dkt. No. 22 at 16–17; Dkt. No. 1 at 8; (3) the
 15 Court's calculation of any unpaid wages requires a factual analysis based on the CBA, Dkt. No.
 16 22 at 17; Dkt. No. 1 at 8–9; (4) compensation for travel time necessitates interpretation of the CBA
 17 and past practices, Dkt. No. 22 at 17–18; Dkt. No. 1 at 9; and (5) the question of whether
 18 Defendants "willfully" withheld wages by operating in accordance with the CBA requires
 19 interpretation of the CBA and the parties' past practices, Dkt. No. 22 at 18; Dkt. No. 1 at 9.
 20 Defendants also cite to several sections of the CBA but do not explain *why* such provisions are
 21 ambiguous or require interpretation to resolve Horton's state law claims. *See* Dkt. No. 22 at 14
 22 (citing Dkt. No. 2-1 at 9–10, 16–18, 24–25, 45–46); *see also* Dkt. No. 2 at 2.

23 Horton, on the other hand, contends that the question of whether Defendants paid him and
 24 proposed class members in accordance with Washington law, unlawfully deducted the cost of
 25 supplies from their wages, or willfully withheld wages "can be answered by simply looking to

1 employee time and payroll records and their testimony without resort to the provisions of the
 2 collective bargaining agreement.” Dkt. No. 15 at 18; *see also* Dkt. No. 23 at 4–8.

3 The Court concludes that Defendants have failed to meet their burden of establishing
 4 federal-question jurisdiction. Counts III and IV in Horton’s complaint raise minimum wage and
 5 overtime claims under Washington law. *See* Dkt. No. 1-4 at 12–13. That the CBA also contains
 6 provisions regarding wages, overtime compensation, travel time, and hours of work does not
 7 mandate preemption absent a “disagreement about the meaning or application of any relevant
 8 CBA-covered terms of employment.” *Schurke*, 898 F.3d at 927. As in *Stafford*, Defendants here
 9 have “not demonstrated any of [their] cited [CBA] provisions are inherently ambiguous on their
 10 face,” or that an examining court would need to do more than “look to” the CBA to determine the
 11 factual underpinnings of Horton’s claims. 2021 WL 2211287, at *4 (citing *McCray v. Marriott*
 12 *Hotel Servs., Inc.*, 902 F.3d 1005, 1011–12 (9th Cir. 2018)). Furthermore, with respect to the
 13 parties’ past practices and the CBA’s implied terms, “alleging a hypothetical connection between
 14 the claim and the terms of the CBA is not enough to preempt the claim: adjudication of the claim
 15 must require interpretation of a provision of the CBA.” *Cramer v. Consol. Freightways, Inc.*, 255
 16 F.3d 683, 691–92 (9th Cir. 2001) (en banc); *see Rogers v. Republic Servs., Inc.*, No. C18-1339-
 17 MJP, 2018 WL 6630041, at *3 (W.D. Wash. Dec. 19, 2018) (“Mere speculation that such a
 18 provision might exist will not defeat the motion for remand.”). And Defendants’ contention that
 19 the CBA may provide terms more favorable than Washington’s statutory requirements, *see e.g.*,
 20 Dkt. No. 22 at 14–15, may go toward the merits of Horton’s claims; but it does not provide a basis
 21 for the Court to find that such claims are preempted. *See Livadas*, 512 U.S. at 123–24; *Schurke*,
 22 898 F.3d at 924; *see also, e.g.*, *Hisle v. Todd Pac. Shipyards Corp.*, 93 P.3d 108, 113–14 (Wash.
 23 2004).

1 Defendants' argument that the Court's calculation of unpaid wages would require a factual
 2 analysis based on the CBA is similarly unavailing. “[T]he mere need to ‘look to’ the collective-
 3 bargaining agreement for damages computation is no reason to hold the state-law claim defeated
 4 by § 301.” *Livadas*, 512 U.S. at 125; *see also, e.g.*, *Anderson v. Pac. Crane Maint. Co., L.P.*, No.
 5 3:16-CV-05825-RJB, 2016 WL 6897813, at *2 (W.D. Wash. Nov. 23, 2016). Put another way,
 6 Defendants have not articulated why a court would need to interpret the terms of the CBA (as
 7 opposed to payroll records and testimony of Horton and any putative class members) to determine
 8 whether Defendants violated the minimum statutory requirements, and if they did, how much they
 9 would be liable for in damages.

10 As for Horton's unlawful deductions claim alleged in Count V, Horton argues that
 11 Defendants have not specifically responded to his arguments in favor of remand and therefore
 12 waived their right to do so. Dkt. No. 23 at 8 n.2; *see generally* Dkt. No. 22. Even assuming
 13 Defendants preserved their preemption argument as to Count V, they have nevertheless failed to
 14 establish that Horton's claim is substantially dependent on analysis of the CBA.

15 Last, the Court rejects Defendants' argument that it would be required to interpret the
 16 CBA's provisions and the parties' past practices for the purposes of resolving Horton's claim in
 17 Count VI regarding Defendants' willful refusal to pay wages under the Washington Rebate Act.
 18 Defendants may, of course, raise as a defense that their conduct comported with the terms of the
 19 CBA, but “defensive reliance on the terms of the CBA, mere consultation of the CBA's terms, or
 20 a speculative reliance on the CBA will not suffice to preempt a state law claim.” *Humble*, 305 F.3d
 21 at 1008; *see also Caterpillar*, 482 U.S. at 399 (“[A] defendant cannot, merely by injecting a federal
 22 question into an action that asserts what is plainly a state-law claim, transform the action into one
 23 arising under federal law, thereby selecting the forum in which the claim shall be litigated.”)
 24 (emphasis omitted)); *Cramer*, 255 F.3d at 691 (“If the claim is plainly based on state law, § 301

1 preemption is not mandated simply because the defendant refers to the CBA in mounting a
 2 defense.”).

3 For the foregoing reasons, the Court concludes Section 301 preemption does not apply to
 4 Horton’s wage and hour and unlawful deduction claims in Counts III, IV, V, and VI, as these
 5 claims do not involve rights existing solely because of the CBA and are not “substantially
 6 dependent” on an analysis of the CBA.

7 3. The Court declines to exercise supplemental jurisdiction over Horton’s claims under
28 U.S.C. § 1367

8 In light of the above, and because Horton has agreed to voluntarily dismiss his preempted
 9 meal period claim, remand is warranted under 28 U.S.C. § 1447(c) absent an exercise of
 10 supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a). Because the Court had federal-question
 11 jurisdiction over this action at the time of removal based on Horton’s meal period claim in Count
 12 II, the Court has discretion to exercise supplemental jurisdiction over his remaining state law
 13 claims. *See Harrell v. 20th Century Ins. Co.*, 934 F.2d 203, 205 (9th Cir. 1991); *Wash. State Nurses*
 14 *Ass’n v. MultiCare Health Sys.*, No. C22-0321-LK, 2022 WL 3042013, at *3 (W.D. Wash. Aug.
 15 2, 2022).

16 However, a district court’s decision whether to exercise jurisdiction after every claim over
 17 which it had original jurisdiction is dismissed “is purely discretionary.” *Carlsbad Tech., Inc. v.*
HIF Bio, Inc., 556 U.S. 635, 639 (2009); *see* 28 U.S.C. § 1367(c)(3). The Supreme Court has
 18 observed that “in the usual case in which all federal-law claims are eliminated before trial, the
 19 balance of the factors to be considered under the pendent jurisdiction doctrine—judicial economy,
 20 convenience, fairness, and comity—will point toward declining to exercise jurisdiction over the
 21 remaining state-law claims.” *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 n.7 (1988);
 22 *accord Acri v. Varian Assocs., Inc.*, 114 F.3d 999, 1001 (9th. Cir. 1997).

1 While the factors of convenience and fairness do not weigh heavily in either direction,
2 considerations of judicial economy and comity counsel against exercising supplemental
3 jurisdiction over Horton’s remaining claims. First, this action is in its early stages and the Court
4 has not invested substantial resources in the case. Horton moved for remand approximately thirty
5 days after removal, and the Court has not evaluated or addressed the merits of Horton’s claims or
6 made any dispositive rulings. As a result, judicial economy weighs in favor of remand. In addition,
7 Horton’s remaining claims are all firmly grounded in and governed by Washington law, and the
8 state court will be well suited to adjudicate Horton’s claims. Therefore, comity also weighs in
9 favor of remand. *See e.g., Russ v. HNN Assocs. LLC*, No. 2:20-CV-1128-RSM-TLF, 2022 WL
10 17406338, at *2 (W.D. Wash. Nov. 14, 2022), *report and recommendation adopted*, 2022 WL
11 17403444 (W.D. Wash. Dec. 2, 2022).

12 For these reasons, the Court declines to exercise supplemental jurisdiction as a matter of
13 discretion. *See* 28 U.S.C § 1367(c)(3).

III. CONCLUSION

15 For the reasons stated herein, the Court GRANTS Horton's motion to remand, Dkt. No.
16 15, and accordingly ORDERS that:

1. Pursuant to 28 U.S.C. § 1447(c), all further proceedings in this case are REMANDED to the Superior Court for King County in the State of Washington;
2. The Clerk of the Court shall mail a certified copy of this Order to the Clerk of the Court for the Superior Court for King County;
3. The Clerk of the Court shall also transmit the record herein to the Clerk of the Court for the Superior Court for King County, Washington; and

23 //

24 | //

4. The Clerk of the Court shall terminate the motion pending at Docket No. 16 and CLOSE this case.

DATED this 1st day of May, 2023.

Barbara Rothstein

Barbara Jacobs Rothstein
U.S. District Court Judge